REMARKS

In view of the above amendments and following remarks, favorable reconsideration in this application is respectfully requested.

Claim Rejection -- 35 U.S.C. §112, 2nd Paragraph

Claim 20 was rejected as being indefinite. In response, the phrase "verifiable source" has been changed to "verified source" to more clearly indicate that the unemployment documents are legitimate.

Claim Rejection – 35 U.S.C. §101

Claim 30 was rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The examiner indicates that a "database" may be "interpreted to recite software *per se* or data structure *per se* at best because this limitation has not been positively recited as being tangibly embodied on any statutory structure." In response, the term "storage device" is used. It is respectfully submitted that the rejection be withdrawn.

Claim Objections – 35 U.S.C. §103

The Examiner rejects claims 1-9, 11-18, 20, 22, 24-25, 27, 29-30 under 35 U.S.C. §103 as obvious over *Callen* (6332125) in view of *Guiso* (An Empirical Analysis of Earnings and Employment Risk) and *Karni* (Optimal Unemployment Insurance: A Survey); and rejects claims

19, 21, 23, 28 as obvious over *Callen* in view of *Guiso* and *Karni* as applied to parent claims 18, 11, 22, 27 in view of *Applicant Admitted Prior Art* (AAPA).

The present invention is a method for scoring an employee's risk of unemployment, predicting an employee's unemployment probability and providing private unemployment insurance (UI) to an employee based largely upon the employee's unemployment risk score, probability of unemployment and the data collected to create them. The invention uses employee-specific employment and unemployment information and personal data to calculate the unemployment score. This is done by designating certain variables that need to be determined for the employee; assigning a risk factor weight to each variable, which is constant and represents the significance of that variable relative to the others; assigning a value to the variable depending upon the employee-specific determination of the particular variable; and doing the calculation. Once the unemployment risk score has been calculated, an employee's unemployment probability flows from the unemployment score and models. The models predict unemployment in certain geographical areas as well as within certain job sectors, but only those models which pertain to the specific characteristics of the employee are used.

Callen provides a method for providing UI to an employer's employees based entirely on one piece of information: the employer's past rates of termination. This so called 'historical information' pertains only to that employer and is applicable only to that employer's employees. *Callen* then uses a 3-tier UI model, based upon the employer's historical information, with each tier representing a different termination rate. There is the 'base' risk which represents the 5 year

average, the 'aberrant' risk which is a moderately increased termination rate that occurs in short lived 'spikes', and the catastrophic risk which occurs the least frequently but has a high termination rate.

The 3-tier approach is done in order to counteract periods of time when the employer has high termination rates in order to give UI benefits to as many terminated employees as possible, since *Callen* sets a limit as to the number of terminated employees who may receive UI. The limit is set by the 5 year moving average and is based upon 'cells', which are employees grouped together based upon 3 variables: salary, job classification and tenure. The UI in *Callen* will only provide for that percentage of employees within each cell that the employer's UI allows. For example, if the employer's base termination rate is only 2%, and the UI premium only concerns that base rate, then only 2% of the total employees within each cell may receive UI benefits. For periods of increased termination rates, the limit is based upon a stop loss percentage chosen by the employer which affects the UI premium. The employer must purchase a different UI premium for each type of risk it wishes to cover.

Unlike *Callen*, the present invention does not use an employer's past termination behavior to calculate unemployment risk or an unemployment risk score. Being the only thing that is used to calculate the probability of unemployment in *Callen*, the present invention analyzes unemployment risk and provides UI based upon said risk. The current invention also does not use a tier-based model to provide the UI. There is only one premium calculated for each employee and no need to provide 3 different levels of coverage in the UI model. Also,

there is no maximum number of employees from one employer that could receive UI and UI payouts upon termination, since each employee is given a policy based upon his unique personal and employment related information. *Callen* does not teach or suggest that employment data is used to determine an unemployment risk. Thus, the claimed invention is distinct and non-obvious as related to *Callen*.

Guiso is an analysis of employment risk and the way in which it relates to the distribution of income among the population. *Guiso* bases the risk of unemployment on a telephone survey in which respondents answered "their chances of having a job in the 12 months following the interview." (*Guiso* p. 242). Not only is this information based upon subjective speculation on the part of the survey respondent, there is no empirical manner to determine the basis upon which the answer is based. *Guiso* also uses data related to **any** change in employment status, whether it is voluntary or involuntary.

The present invention does not use any subjective information from an employee to calculate the unemployment risk score or unemployment probability. *Guiso* does not teach or suggest that employment and unemployment data can be used to determine the risk of unemployment. There is no way in which to manipulate the subjective survey answers of *Guiso* into an objective, fact based unemployment probability. Subjective information has no place in the claimed invention, because it is not capable of contributing to the calculations and the claimed invention only uses objective information. As such, the claimed invention is distinct from *Guiso* and not made obvious by any of the manipulation of subjective data in that article.

Karni is a compilation and summarization of multiple articles concerning possible ways in which to implement unemployment insurance. Specifically, the Examiner relies on *Karni* to show that UI policies have been theorized wherein the employee himself enters into the policy and also pays for it. However, there is no specific mention of the way in which an employee must enter into the UI policy or how to pay for it, in the claimed invention. Furthermore, someone paying for their own insurance does not render claim 1 unpatentable.

The claimed invention implements an entirely different method of determining unemployment risk and relies upon completely distinct information to calculate the risk. *Callen* does not teach collecting employment data in order to create an unemployment probability. The employee data collected in *Callen* is used to determine the maximum amount of money an employee may receive from the UI, based upon his job type and salary earned; not to determine unemployment risk. The claimed invention collects employment data so that it may create an unemployment risk score based upon the employee-specific information. The employee's collected information is then analogized to models which indicate how likely an employee is to be involuntarily terminated based upon certain job and personal characteristics. Thus, *Callen* does not make the collection of such data in the claims obvious.

Also, figure 2 of *Callen* does not teach calculating the unemployment risk for the employee based on unemployment data, as per claim 1. Figure 2 is a visual depiction of the way in which *Callen* classifies employees. On pages 8-9 of the office action, the Examiner contends that Figure 2 teaches segmenting employees into risk pools. Figure 2 cannot and does not teach

both of these things. Classifying employees in some manner does not teach calculating an unemployment risk based on unemployment data, especially when the classifications are based upon employee data (the employee's salary, tenure and job classification). The present invention calculates an unemployment risk score for an employee based upon unemployment data, but *Callen* does not teach to do so and so it does not obviate that aspect of claim 1.

With respect to claim 6, *Callen* does not teach an employment security score. The claim calculates an employment security score for the *employee*, not the *employer*. It is a measure of how secure the employee's job is based upon his specific characteristics and compared to models which predict job security based upon certain characteristics.

With respect to claims 18 and 20, the Examiner relies on Figure 8M of *Callen*. First, Figure 8M is only a definitions page for terms which may appear in a hypothetical insurance contract. In no way does providing the definition of a term teach that such a term or idea must be or is actually used. More specifically, "providing relevant information," as the Examiner alleges reads on "proof" in claim 18, is vague and could apply to almost any type of information whatsoever. As such, it does not teach or suggest the features of claims 18 and 20.

The Examiner suggests that claim 2 and other similar claims constitute nonfunctional descriptive material and so are not entitled to patentable weight. However, in the context of nonstatutory subject matter, the phrase descriptive material is used to identify things like music or data arrangements (nonfunctional), or data structures and computer programs which imparts

functionality when employed as a computer component (functional). See MPEP 2106.01. The present invention clearly does not fall into either category. It is nothing like music or an arrangement of data. And, it is not merely a data structure or a computer program.

Rather, the claims define the variables which are the invention. The claimed invention specifies exactly what data is utilized in the system to determine the unemployment risk. These data elements are obtained from the employee and depending upon the variable value the employee represents, the variable is assigned a designated coefficient. Each coefficient also has a different weight, which is constant, representing the relative importance each variable has to the overall unemployment risk. Once the values are determined, a calculation is done by the computer which represents the unemployment risk of that certain employee. Calculating an unemployment risk for an employee is a practical result of all that employee's information and leads to the creation of a risk score and eventually an UI premium, all of which are practical, tangible outgrowths of the compilation and manipulation of the employee's gathered information. The calculation is useful as a determination of how likely an employee is to be involuntarily terminated, allows the employee to take steps to either avoid termination or find new employment if necessary, and allows a private unemployment insurer to offer an UI policy to the employee. All of these are practical applications of the unemployment probability and unemployment risk score calculations, and as such it is respectfully submitted that they are not descriptive material, but instead are entitled to patentable consideration.

In the event there are any questions relating to this Amendment or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (Ref. 132770.00101). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, Applicant hereby petitions under 37 CFR 1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized above.

Respectfully submitted,

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